

eliminated by the triggering of other statutory provisions, this result does not cause the waiver to be permanent rather than temporary within the meaning of § 3-2531.

2. Is there a "facilities-based" requirement in PURA95 § 3-2531, separate and apart from the build out plan requirements which the Commission has waived? If so, what does this requirement entail and how can it be satisfied; for example, can that requirement be met by the use of unbundled network elements alone?

Answer: The Commission ruled that a § 3-2531(f) waiver of build-out requirements removes the specific build-out obligations contained in PURA95 § 3-2531(c), (d), and (g) and therefore relieves the applicant from having to commit to the use of facilities as a condition of obtaining a COA. The Commission then ruled that a COA is nonetheless a facilities-based certificate and that, pursuant to PURA95 § 3-258(a), a COA applicant must offer any customer in its certificated area all basic telecommunications services, has the obligation to build facilities to provide service when such facilities are necessary to meet the statutory obligation, and is not relieved of the requirement to possess the technical and financial capabilities to construct facilities sufficient to meet the Commission's quality of service requirements. The Commission further stated that, where the build-out requirements have been waived, a COA holder may provide service by means of unbundled elements, resale of services obtained under the "parallel federal track" provided by the FTA96, or a combination of both, but that, where such services are unavailable, the COA holder must construct its own facilities to meet its statutory obligations.

3. Are COA holders precluded from using resale of SWBT's flat-rated service to serve any portion of their proposed service area before the prohibition on SWBT's provision of interLATA service is removed? If so, to what extent? Does any prohibition on resale of flat-rate service include services available for resale under the FTA96?

Answer: The Commission found that Issue No. 3 need not be resolved in this docket. The Commission nonetheless stated that COA holders are precluded from reselling service out

SWBT's flat-rated state resale tariff established pursuant to PURA95 § 3-2532(d) (2), but they are not precluded from reselling flat-rated services as authorized by FTA96 § 251 and 252. A COA holder may therefore provide service under the federal track via any and all means allowed by FTA96.

4. Are there any remaining requirements under PURA95 § 3-2531 which, notwithstanding the waiver, would preclude the award of a COA to AT&T or MCImetro, or which would prevent AT&T or MCImetro from exercising its rights under its interconnection agreement with SWBT?

Answer: The Commission indicated that failure to comply with the applicable requirements identified in the answer to Issue No. 1 (PURA95 § 3-2531(a), (b), (e), and (h)) could preclude the issuance of a COA but then ruled that such compliance or noncompliance should first be determined by the ALJ. The Commission also found that it was not necessary to determine whether any requirements under PURA95 § 3-2531 would prevent COA applicants MCImetro and AT&T from exercising any rights under an interconnection agreement with SWBT.

5. Is SWBT prevented from contesting the waiver of the build-out requirements in these dockets due to waiver, collateral estoppel, res judicata, issue preclusion, or other preclusive effect of the Commission's ruling in Docket No. 15990?

Answer: The Commission responded that, although SWBT was not precluded from contesting the waiver of the build-out requirements as a matter of law, the Commission had previously determined that the build-out requirements should be waived and was not inclined to change its position. The Commission reiterated the concerns that led to its position regarding good cause for a waiver in Docket No. 15990 and indicated that such concerns support a finding of good cause for a waiver in the MCImetro and AT&T COA application dockets.

Following the issuance of the Order on Certified Issues, MCImetro filed its Motion to Sever Dockets, Motion for Summary Adjudication, and, Alternatively, Motion for Hearing on the Merits (MCImetro's motion), requesting, in part, that the MCImetro COA application proceeding be severed from Docket No. 16658, which request the ALJ granted in Order No. 9.

V. Motion for Summary Decision

A. MCImetro's Motion

In its motion for summary adjudication, MCImetro incorporated by reference its earlier motion for summary adjudication with affidavit in order to support its position that the Commission's Order on Certified Issues decided the sole issue raised at the hearing on the merits by SWBT.³ MCImetro asserted that it has complied with all of the provisions of PURA95 § 3.2531 (to wit, subsections (a), (b), (c), and (d)) that the Commission found to remain applicable in a COA application case where the build-out plan requirements are waived.

B. SWBT'S Response

SWBT responded that the application must be denied unless MCImetro would agree to make an appropriate commitment to COA facilities-based requirements. One possible example of a specific commitment is found in SWBT's proposed finding that MCImetro should recognize and accept its obligation to build facilities where necessary to serve specific customers within 30 days of a request for service.⁴ SWBT also urged the ALJ to independently assess the Commission's

³ "The only issue in dispute as far as we're concerned is that MCI does not meet the facilities-based requirement of PURA 95 § 3.2531." Briefing of SWBT, Tr. at 5 (Jan. 31, 1997).

⁴ SWBT's Proposed Findings and Conclusions at 3-4 (proposed Finding of Fact No. 11) (April 18, 1997). Although SWBT referred to a request for service "anywhere in the State of Texas," the ALJ believes SWBT

answers to the certified questions and judicially determine their applicability or inapplicability in this case. SWBT further claimed that, even if MCImetro were to enter into an interconnection agreement for resale of "federal track" flat-rate services, PURA95 would preclude MCImetro from reselling those services. SWBT did not contest MCImetro's technical and financial qualifications for obtaining a COA or MCImetro's ability to meet the Commission's quality of service requirements.

C. General Counsel's Response

General Counsel responded to SWBT's response to MCImetro's motion by stating that the Commission had addressed all disputed issues of law in its Order on Certified Issues. General Counsel thus argued that the ALJ should reject SWBT's request for the ALJ to decide the legal issues anew. General Counsel further stated that MCImetro had proven it was financially and technically qualified to construct the facilities necessary to meet the Commission's quality of service standards; therefore, no facts remained in dispute.

D. MCImetro's Reply to SWBT's Response

In its reply to SWBT's response to MCImetro's motion, MCImetro argued that, although the ALJ is the principal factfinder in a case, the ALJ is bound by a statement of law provided by a higher tribunal -- therefore, the ALJ may not independently decide legal issues already determined by the Commission. MCImetro also quoted the Order on Certified Issues at 6 to show that, contrary to SWBT's assertion, MCImetro "is not required to commit to the use of facilities as a condition for obtaining a COA." Finally, MCImetro disagreed with SWBT that PURA95 would prohibit MCImetro from reselling flat rate service obtained through an interconnection agreement under

¹intended to refer to a request from anywhere in MCImetro's service area in the State of Texas. This suggested requirement appears to be drawn from Preliminary Order issue e and PURA 95 § 3.253 (a), which relate to the build-out plan requirement that the Commission has announced its intention to waive for MCImetro. Note that § 3.253 (a) allows the Commission to issue rules as to how soon a COA holder must be able to serve customers

FTA96. MCImetro argued that such "reverse preemption" is nonsensical and also that the Commission itself restated that the "federal track" for resale is available to COA holders even though the parallel "state track" is not. Order on Certified Issues at 8-10.

E. ALJ's Analysis

The ALJ finds MCImetro's motion for summary adjudication and General Counsel's response thereto persuasive, while he is unpersuaded by the arguments made in SWBT's response to MCImetro's motion. In regard to SWBT's response, the ALJ first concludes that it is not necessary to independently assess or clarify the applicability of the Commission's Order on Certified Issues. The circumstances here dictate that it is not reasonable to deviate from the Commission's position, which favors granting a waiver.

Next, as to SWBT's claim that, even if MCImetro were to enter into an interconnection agreement for resale of "federal track" flatrate services, PURA95 would preclude MCImetro from reselling those services, the ALJ notes that this claim does not actually present an argument that MCImetro should not be granted a COA. Rather, this comment appears to be intended to persuade the Commission to place such a limitation or condition in the COA-granting order, or at least to notify MCImetro that SWBT intends to continue challenging a COA-holder's authority to resell flatrate services. The ALJ believes that such a challenge will continue to be unsuccessful, however, because the Commission has already several times restated its position that COA holders may provide local service under the "federal track" through whatever means allowed under FTA96.

Thirdly, a COA holder's obligation to construct its own facilities when necessary to meet statutory obligations (*see* PURA95 § 3-258(a)) is a consequence of the obligation to serve and the facilities-based nature of a COA, but it does not trigger a requirement of commitment to build facilities as a condition for obtaining a COA, nor does it by itself require a commitment to build out facilities where necessary to serve certain customers within 30 days of a request for service.

Nonetheless, MCImetro, in its response to the application's service quality questionnaire, has already committed to "[p]rovide service within thirty working days of a customer order, excluding those orders where a later date is requested by the customer." This response was limited, however, by the following general caveat: "To the extent that MCImetro relies on SWB or other providers as the underlying carrier for local exchange services, MCImetro's ability to meet the applicable standards will be contingent on those other providers." If MCImetro intends to rely on SWBT as underlying carrier for all of MCImetro's customers, then MCImetro's commitment does not in fact apply to providing service by building facilities within thirty working days of a customer order. Given that MCImetro has not yet been directly asked this question, the ALJ cannot assume MCImetro's intent. A relevant question, however, is whether MCImetro may in fact ever be required to build facilities despite a build-out waiver.

In its Order on Certified Issues, the Commission offered one such scenario: the obligation to build when such facilities are necessary to meet a COA holder's obligations under PURA95 § 3-258(a). A review of PURA95 § 3-258(a), however, suggests that MCImetro may be able to rely on SWBT in order to avoid any build-out obligations related to that statutory provision. "[A] telecommunications utility that is granted a certificate of convenience and necessity [i.e. CCN] or 'COA' shall be required to offer to any customer in its certificated area all basic local telecommunications services In any event, as between a [CCN holder] and a [COA holder], the

This service quality questionnaire question is apparently like SWBT's suggested finding also drawn from PURA 95 § 3-253 (c), but the service quality questionnaire question specifies 30 working days and does not expressly refer to build-out, whereas PURA 95 § 3-253 (c) does not specify 30 working days as opposed to "calendar days" and does expressly refer to "a build-out area." The ALJ observes that MCImetro could argue that, assuming that the service quality questionnaire question was in fact drawn from PURA 95 § 3-253 (c), and given that compliance with PURA 95 § 3-253 (c) will be waived, MCImetro's 30-day commitment no longer refers, if it ever did, to building facilities to a requesting customer within 30 days.

The ALJ invites MCImetro to address this question in its Exceptions to the PFD, if any, and to clarify whether it commits to provide service within 30 working or calendar days of a customer order by building facilities, if necessary.

"CCN holder] has provider of last resort obligations" ² P.U.R.A.95 § 3-258(a). Because MCImetro's application is limited to SWBT's service areas in Texas, and because SWBT is a CCN holder, then, under this COA that MCImetro seeks, MCImetro will be able to avoid any § 3-258(a)-related build-out obligation by pointing to SWBT as the provider of last resort. If MCImetro does not want to build facilities in order to serve a particular customer lacking facilities. In such a case, that customer could be served: (1) by SWBT; or (2) by MCImetro, with SWBT as the "underlying carrier." In neither case would MCImetro have to build facilities.

In any event, regardless of whether MCImetro has in fact committed to provide service within 30 (working or calendar) days of a customer order by building facilities if necessary, the ALJ concludes that MCImetro is not required by P.U.R.A.95 § 3-2531 to specifically commit to the use of facilities as a condition for obtaining a COA. ³

F. ALJ's Conclusion

MCImetro has shown that there is no genuine issue as to any material fact and that it is entitled to summary decision in its favor as a matter of law. See P.U.C. PROC. R. 22.182(a). The ALJ therefore grants MCImetro's motion for summary adjudication by formally closing the hearing on the merits and issuing this PFD in accordance with P.U.C. PROC. R. 22.182(e).

The ALJ also grants MCImetro's motion to adopt its proposed findings and conclusions, as extensively modified below. The ALJ does not have the authority to grant MCImetro's motion for expedited award but has attempted to expedite the processing of this PFD.

² The ALJ will assume for the purpose of this analysis that MCImetro, as a COA holder, would become a telecommunications utility, to which this statutory provision applies.

³ The ALJ nonetheless once again invites MCImetro to clarify in its Exceptions to the PFD, if any, whether and to what extent it has committed to build facilities where necessary.

VI. Findings of Fact and Conclusions of Law

A. Findings of Fact

Procedural History

1. MCImetro Access Transmission Services, Inc. (MCImetro or Applicant) is a corporation and is a wholly-owned subsidiary of MCImetro, Inc., which is a wholly-owned subsidiary of MCI Telecommunications Corporation, which is a wholly-owned subsidiary of MCI Communications Corporation.
2. On December 6, 1996, MCImetro filed an application under P.U.C. SUBST. R. 23.31(d) and PURA95⁴ § 3.2531 for approval of a facilities-based certificate of operating authority (COA) in the local exchange areas of Southwestern Bell Telephone Company (SWBT).
3. In its application, MCImetro requested a waiver of the build-out requirements of PURA95 § 3.2531 due to the recent passage of the federal Telecommunications Act of 1996 (FTA96)⁵ and pending petitions before the Federal Communications Commission (FCC) requesting a ruling in which aspects of PURA95 were preempted by the FTA96.
4. On December 10, 1996, the Public Utility Commission of Texas (PUC or Commission) issued its Preliminary Order referring this docket to the State Office of Administrative Hearings (SOAH) and finding good cause to extend the 60-day application-processing period under PURA95

⁴ Public Utility Regulatory Act of 1995, TEX. REV. CIV. STAT. ANN. art. 4466c-1, Vernon Supp. 1997 (PURA95 or PURA).

⁵ Pub. L. No. 1044-134, 110 Stat. 56, codified at 47 U.S.C. §§ 1-13.

§ 3.25(c). The Preliminary Order identified the issues to be addressed by the parties in the proceeding.

§ 3.25(d). On December 12, 1996, the Administrative Law Judge (ALJ) issued Order No. 1 establishing the procedural schedule for this proceeding and requiring every contesting party to file a list of contested issues.

6. The Commission provided adequate notice of MCI Metro's application in the *Texas Register* and via the Internet.

7. On December 19, 1996, SWBT filed a motion to intervene, which the ALJ granted. The Commission's General Counsel also participated in this proceeding.

8. SWBT filed its Comments and Identification of Contested Issues (SWBT's Contested Issues) on December 20, 1996. SWBT's Contested Issues provided a variety of arguments to support its position that the Commission lacks authority to grant a "permanent" waiver of the type requested and to waive requirements and resale restrictions, that MCI Metro's application lacks evidence to establish a cause for a waiver, and that the application is insufficient due to MCI Metro's reliance on a waiver of an COA requirements beyond those applicable to a service provider certificate of operating authority (SPCOA).

9. General Counsel did not file a list of contested issues.

10. On January 4, 1997, the Commission's Office of Policy Development (OPD) issued a draft supplemental preliminary order in which the Commission would take the position that it is appropriate to administratively and temporarily waive the build-out requirements for MCI Metro as authorized under PURA95 § 3.2531(f) until either: (a) the Federal Communications Commission (FCC) rules that the requirements are preempted as a result of the FTA96, or (b) SWBT is authorized to provide inter-region interLATA service in Texas. In taking this position, the Commission would

adopt the rationale underlying the waiver addressed in the supplemental preliminary order in PUC Docket No. 15990.¹⁷ On January 9, 1997, the Commission issued its Supplemental Preliminary Order as proposed by OPD.

11. MCImetro filed its response to SWBT's Contested Issues and its motion for summary adjudication on January 7, 1997.

12. At the hearing on the merits on January 8, 1997, the ALJ denied MCImetro's motion for summary adjudication.

13. During the hearing on the merits, the parties moved to consolidate this proceeding with the proceeding in PUC Docket No. 16658¹⁸ for the purpose of certifying common issues to the Commission. In Order No. 2, issued on January 9, 1997, the ALJs in those two dockets granted the motion and consolidated the two matters.

14. During the hearing on the merits, the parties also agreed that the issues raised by SWBT could be addressed through the use of certified issues as allowed by P.U.C. PROC. R. 22.127. The proposed list of certified issues was identical to the list which the parties in Docket No. 16658 had submitted in that proceeding.

15. In the Order Certifying Issues to the Commission dated January 9, 1997 and filed January 15, 1997, the ALJs certified five issues to the Commission.

¹⁷ Application of Sprint Communications Company L.P. for a Service Provider Certificate of Operating Authority or, in the Alternative, Certificate of Operating Authority in the Territory of Southwestern Bell Telephone Company, Docket No. 15990, Supplemental Preliminary Order at 3-8 (June 27, 1996).

¹⁸ Application of AT&T Communications of the Southwest, Inc. for a Certificate of Operating Authority, SOAH Docket No. 473-96-0190, PUC Docket No. 16658 (pending) (AT&T CDA Application).

16. The parties filed briefs on the certified issues on or before January 28, 1997. GTE Corp. Services, Incorporated filed an *amicus curiae* brief on January 28, 1997. The Commission considered the certified issues at its open meetings on February 5 and 19, 1997 and issued its Order on Certified Issues on March 14, 1997.

17. On March 18, 1997, MCImetro filed its Motion to Sever Dockets, Motion for Summary Adjudication, and, Alternatively, Motion for Hearing on the Merits (MCImetro's motion), requesting, in part, that the MCImetro COA application proceeding be severed from Docket No. 16658, which request the ALJ granted in Order No. 9.

18. On March 26, 1997, SWBT filed its response to MCImetro's motion. On March 30 and April 2, 1997, respectively, MCImetro and General Counsel each filed a reply to SWBT's response to MCImetro's motion.

19. On April 4, 1997, the ALJ issued Order No. 9, severing the MCImetro COA proceeding from the AT&T COA proceeding and requesting each party to file proposed findings of fact and conclusions of law by April 18.

20. On April 18, SWBT filed its proposed findings and conclusions, MCImetro filed the joint proposed findings and conclusions of MCImetro and General Counsel, and MCImetro also filed its motion to adopt proposed findings and conclusions and to expedite COA award.

MCImetro's Application

21. MCImetro will provide a full range of telecommunications services, including local exchange services and exchange access services, within the territory currently served by SWBT. The proposed service areas are contiguous and reasonably compact.

22. MCImetro is not a municipality and will not enable a municipality or municipal electric system to offer a service prohibited under PURA95 § 3.251(d).

23. MCImetro has applied for all necessary municipal consents, franchises, or permits required for the types of services and facilities proposed.

24. MCImetro does not currently hold a Service Provider Certificate of Operating Authority for any part of the service area included in its application.

25. MCImetro is a wholly owned subsidiary of MCImetro, Inc., MCI Telecommunications Corporation, and MCI Communications Corporation, one or more of which will provide any additional financial and technical support necessary for MCImetro to provide its proposed services under the COA. MCImetro is therefore financially and technically qualified to provide service under a COA. No party contested this issue.

26. MCImetro is not seeking a COA in an exchange of an incumbent local exchange company serving fewer than 31,000 access lines in Texas.

27. MCImetro has the ability to meet the Commission's quality of service requirements.

28. MCImetro has never had a permit, license, or certificate revoked or denied by any state, except that this Commission found MCImetro ineligible for a service provider certificate of operating authority (SPCOA) in PUC Docket Nos. 14676 and 15606 (on the basis of the percentage of intrastate switched access minutes of use of its affiliate, MCI Telecommunications Corporation).

29. MCImetro has no officers who are convicted felons.

30 Because there is no genuine contested issue as to any material fact remaining to be decided and because MCImetro has shown itself entitled to summary decision in its favor as a matter of law, no evidentiary hearing is necessary, and MCImetro's motion for summary decision should be granted.

B. Conclusions of Law

1. MCImetro is a telecommunications provider as defined in PURA95 § 3.002(11).
2. The Commission has jurisdiction and authority over this proceeding pursuant to PURA95 §§ 3.051, 3.251, and 3.2531.
3. The Commission provided adequate notice of the application and proceeding in compliance with PURA95 § 3.2531 and P.U.C. PROC. R. 22.54.
4. Good cause exists to extend the 60-day application-processing deadline specified by PURA95 § 3.2531(e).
5. PURA95 § 3.2531 and P.U.C. PROC. R. 23.31(d) provide the criteria for determining whether a COA application should be granted.
6. There are no criteria relevant to such a determination in PURA95 § 3.2531(a) or (k); there are no criteria relevant to MCImetro's application in PURA95 § 3.2531(h) or (j).
7. MCImetro satisfied PURA95 § 3.2531(b) by filing its application under P.U.C. PROC. R. 23.31(d), and otherwise indicating that it seeks a facilities-based COA rather than an SPCOA.

8 As to PURA95 § 3.253(a)(1) and (f), with corresponding PUC Page R 23.33(d)(1) for the reasons set forth in the Commission's Supplemental Preliminary Order and Order on Certified Issues, and pursuant to PURA95 § 3.253(h), there is good cause to administratively and temporarily grant a waiver of the build-out requirements of PURA95 § 3.253(i) until either (a) the Federal Communications Commission (FCC) rules that the requirements are preempted as a result of the FTA96, or (b) SWBT is authorized to provide in-region interLATA service in Texas.

9 Because of the waiver of the build-out requirements, MCImetro is not required to provide a PURA95 § 3.253(i) build-out plan.

10 A COA holder's obligation to construct its own facilities when necessary to meet statutory obligations (see PURA95 § 3.258(a)) is a consequence of the obligation to serve and the facilities-based nature of a COA, but it does not trigger a requirement of commitment to build facilities as a condition for obtaining a COA.

11 MCImetro is not required by PURA95 § 3.253(i) to specifically commit to the use of facilities as a condition for obtaining a COA.

12 MCImetro has satisfied PURA95 § 3.253(e) and PUC Page R 23.33(d)(1) and (2) by demonstrating that, among other things, it has the financial and technical qualifications to provide the proposed services and the ability to meet the Commission's quality of service standards.

13 The service areas proposed by MCImetro satisfy the geographic requirements in PURA95 § 3.253(h).

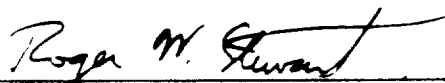
14 The Commission lacks the jurisdiction or authority to determine the necessity of a franchise between a municipality and a COA holder.

15 The requirements of P.U.C. PROC. R. 22.182 have been met in this proceeding, and this proceeding may be resolved by summary decision. SWBI, the only intervenor opposing MCI Metro's motion for summary adjudication, failed to prove that there is a genuine issue of material fact for determination at a hearing or that summary decision is inappropriate as a matter of law.

16 Based on the foregoing findings of fact and conclusions of law, MCI Metro is entitled to approval of its COA application, having satisfied PURA 95 § 3.2531.

SIGNED AT AUSTIN, TEXAS the 6th day of May 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



ROGER W. STEWART
ADMINISTRATIVE LAW JUDGE

PUC DOCKET NO. 16744
SOAH DOCKET NO. 473-96-2315

APPLICATION OF MCIMETRO	§	PUBLIC UTILITY COMMISSION
ACCESS TRANSMISSION SERVICES,	§	
INC. FOR A CERTIFICATE	§	OF TEXAS
OF OPERATING AUTHORITY	§	

PROPOSED ORDER

In its open meeting at its offices in Austin, Texas, the Public Utility Commission of Texas (Commission) finds that this docket was processed by an Administrative Law Judge from the State Office of Administrative Hearings in accordance with applicable statutes and Commission rules. The Proposal for Decision, containing findings of fact and conclusions of law, is adopted and incorporated by reference into this Order.

1 The application of MCImetro Access Transmission Services, Inc. (MCImetro or the Applicant) for a certificate of operating authority (COA) is granted. MCImetro is granted COA No. _____ in the same service territory as Southwestern Bell Telephone Company.

2 AT&T is granted a temporary waiver of compliance with the build-out requirements prescribed in the Public Utility Regulatory Act of 1995, TEX. REV. CIV. STAT. ANN. art. 1446c-1, § 3.253 (c), (d), and (g) (Vernon Supp. 1997) either: (a) the Federal Communications Commission rules that the requirements are preempted as a result of the federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.*; or (b) Southwestern Bell Telephone Company is authorized to provide in-region interLATA service in Texas.

3 The Applicant's provision of local telephone service to end-users, whether by its own facilities, flat-rate resale, or usage sensitive loop, must also include "9-1-1" emergency telephone service at a level required by the applicable regional plan followed by local telephone service providers under Chapters 771 and 772 of the Texas Health and Safety Code, TEX. HEALTH & SAFETY CODE ANN. § 771.001, *et. seq.* (Vernon Supp. 1997) (the Code) or other applicable law and any applicable rules and regulations implementing those chapters. The Applicant shall diligently work

with the Advisory Commission on State Emergency Communications, local "9-1-1" entities, and any other agencies or entities authorized by Chapters 771 and 772 of the Code to ensure that all "9-1-1" emergency services, whether provided through the certificate holder's own facilities, flat-rate resale, or usage sensitive loop, are provided in a manner consistent with the applicable regional plan followed by local telephone service providers under Chapters 771 or 772 of the Code or other applicable law and any applicable rules and regulations implementing those chapters. The Applicant shall diligently work with the "9-1-1" entities to pursue, in good faith, the mutually agreed goal that the local "9-1-1" entities and emergency service provider experience no increase in their current level of rates and, to the extent technically feasible, no degradation in services as a result of the certification granted herein and the involvement of the certificate holder in the provision of "9-1-1" emergency service.

4 All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.

SIGNED AT AUSTIN, TEXAS the _____ day of _____ 1997.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD, III, CHAIRMAN

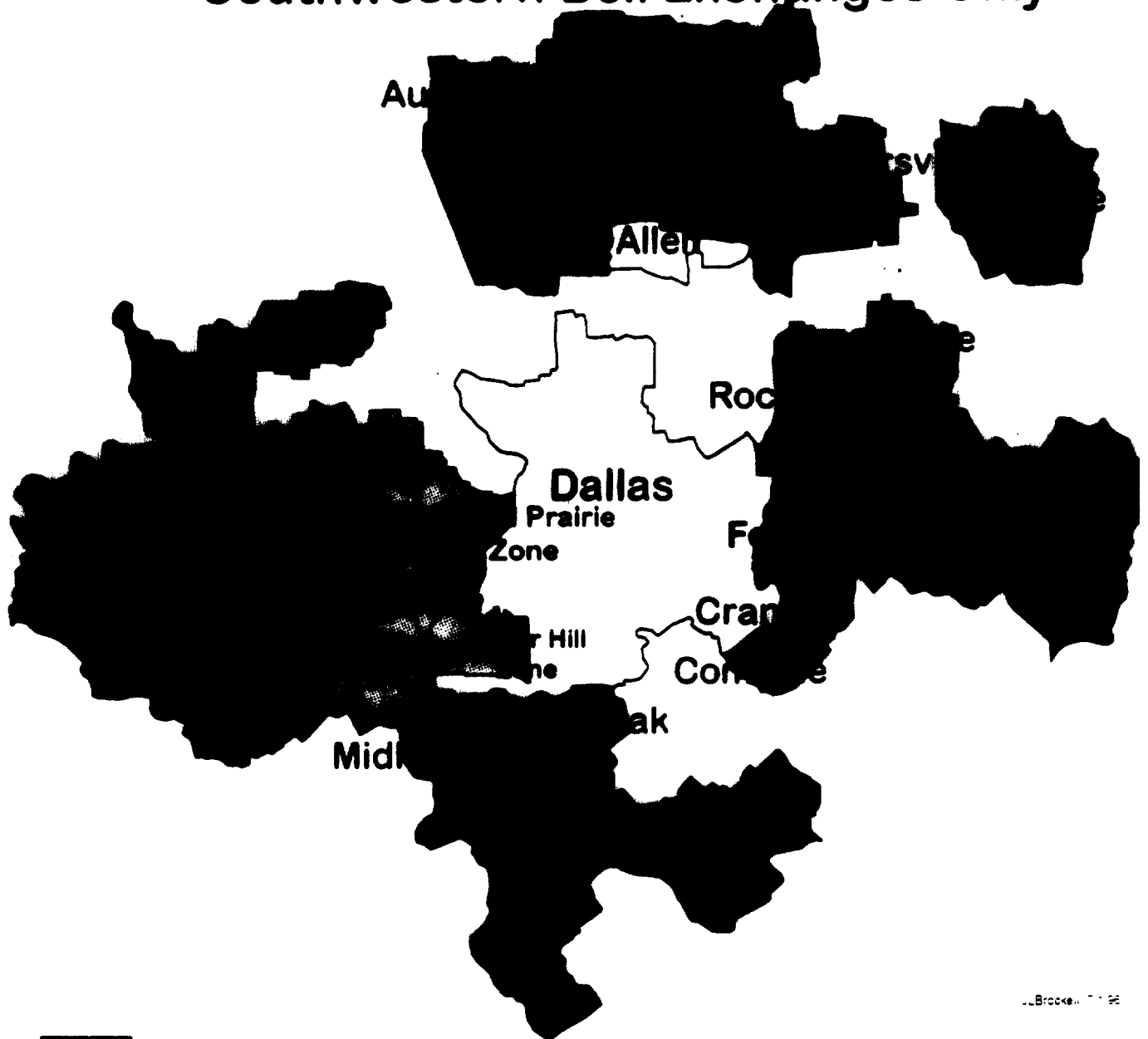
ROBERT W. GEE, COMMISSIONER

JUDY WALSH, COMMISSIONER





ATTEST:

STEPHEN J. DAVIS
SECRETARY OF THE COMMISSION

Southwestern Bell Exchanges Only



© 1996 SBC

-  **Mandatory Calling Plan**
-  **Two-way Optional Calling Plan**
-  **One-way Optional Calling into Dallas**
-  **Zones with Mandatory & Optional Calling Plans**

MEMO

TO: KAREN HARVEY - MCI METRO

FROM: MARY PHILLIPS - CODE ADMINISTRATOR-TLXAS

DATE: 05-06-97

SUBJECT: 972 CODE RETRIEVALS

This is to confirm conversation with Bill Adair, NPA Relief Coordinator, concerning the necessity to retrieve back 27 NXXs that had been set aside for your future use.

The 972 NPA declared public notice that the 972 NPA is in "Jeopardy" of exhaust, back in December 1996. Per the Central Office Code Assignment Guidelines this situation suggests the cancellation of code reservations. Therefore, effective immediately, the following codes will be a part of the allocated jeopardy plan and will no longer be set aside for MCI Metro's future planning purposes: 972-232, 302, 310, 356, 408, 410, 415, 439, 502, 505, 577, 581, 632, 639, 649, 656, 707, 725, 728, 729, 807, 813, 825, 842, 925, 961 and 963.

Feel free to submit application for at least one code at a time as your "activation" needs arise for this NPA, as a limited number of NXXs will hopefully be available to serve your immediate needs. However, no reservations will be accepted until relief can be obtained sometime in the 1998-99 time frame. We regret any inconvenience this may cause you at this time. I have attached a copy of the "972 Jeopardy Plan" for your information and instruction.

Thank you for your cooperation and understanding during this code jeopardy period.

Cc: Bill Adair

972 JEOPARDY PLAN EFFECTIVE 5-15-97

1. The Industry Jeopardy plan for the 972 NPA begins on May 15, 1997.
2. No CO Codes may be reserved during the duration of this Jeopardy Plan. All existing CO Code reservations will be canceled.
3. A total of 120 CO codes are available for assignment under this plan.
4. The assumed NPA relief date for this Jeopardy plan is 1-31-99. NPA relief meetings for this relief effort are currently underway and are being directed by the Texas PUC staff. For additional information on these efforts, call David Leatherston on 512-936-7325.
5. All code applications will be handled on a first come/first served basis.
6. Code assignments under this plan will begin on Monday, May 15, 1997. Subsequent months will begin on the **FIRST TUESDAY** of each month: June 3, July 2, etc.
7. All applications will be date and time stamped. For the purposes of this plan, a day begins at 8:00 am Central Time. The clock to be used for this plan will be the clock associated with the Code Administrator's fax machine.
8. All code applicants should continue their existing procedures for transmitting code requests to the Code Administrator. However, for the purposes of the 972 Jeopardy plan, a copy of the code request must be faxed directly to the Code Administrator. **The fax number is 405-291-6769.**
9. No expedite activations will be allowed during the Jeopardy plan.
10. Any request for a code received after 12-26-98 will be assigned a code from the NPA's as they will be configured after 972 NPA relief has been completed.
11. Six (6) NXX's per month may be assigned by the Code Administrator. The total codes assigned in a month will be at least 6 per month. The total per month could increase if additional codes are retrieved or if the full allocation of 6 codes in a previous month are not assigned.
12. NXX's will be assigned initially on a 1/applicant basis, regardless of the number of requests received from that applicant. If 6 applicants submit requests for codes in a month, each applicant will be assigned 1 code. All additional applications will be denied for that month.
13. If less than 6 NXX applications are received in a month, the balance of the 6 code allocation will be transferred to the next month for possible assignment.
14. If less than 6 applicants request codes in a month, but the total number of code applications exceed 6 codes, the requests will be processed by assigning one code to each applicant in sequential order. Once the last applicant is assigned a code, the assignment process will rotate to the applicants who requested multiple assignments. Each multiple assignment request will be assigned a code in sequence until the allocation for that month is exhausted. Unfilled requests will be returned to the code applicants.
15. Once all codes available in a month have been assigned, all remaining code requests will be canceled and the applications will be returned to the code applicant.
16. If an applicant is one of the first 6 applicants to request a code in a month, the code will be assigned immediately. If an applicant requests multiple codes in a month, the additional codes will not be assigned until the end of the month when all applications have been received.

17. Only the first 6 applicants in a month will be assigned codes from that month's allocation of codes. However, if more than 6 applicants request codes in a month, these applicants will be "rolled" to the next month. These "rolled" requests will receive priority attention in this month. The assignment procedure described above will then be applied to these requests. This process will apply only to applicants who do not receive any codes in the monthly allocation process. Requests for multiple code assignments that are not filled will be returned to the applicant for review and re-submission as required by the applicant.
18. Each month, the procedure described above will be used.
19. Any dispute over the implementations of this jeopardy plan will be resolved with the involvement of the Code Administrator, the Industry Team and/or the APSC staff. This plan has been reviewed by the Arkansas Public Service Commission staff.

**Pertinent Excerpts from the
Central Office Code (NNX, NXX) Assignment Guidelines**

ver. 7/14/93

2.0 Assumptions and Constraints

2.4 The applicant must be licensed or certified to operate in the area, if required, and must demonstrate that all applicable regulatory authority required to provide the service for which the central office code is required has been obtained.

3.0 Assignment Principles

3.4 Central office codes shall be assigned in a fair and impartial manner to any applicant that meets the criteria for assignment as detailed in Section 4.0.

3.6 Any entity that is denied the assignment of one or more central office codes under these guidelines has the right to appeal that decision per Section 10.

4.0 Criteria for the Assignment of Central Office Codes

4.1 Assignment of the initial code(s) will be to the extent required to terminate PSTN traffic as authorized or permitted by the appropriate regulatory or governmental authorities, and provided all the criteria in Sections 4.1.1 through 4.1.3 are met. An initial code assignment will be based on identification of a new switching entity, physical point of interconnection (POI), or virtual POI consistent with regulatory restriction. Utilization criteria or projection will not be used to justify an initial NXX assignment.

4.1.1 The applicant must certify a need for NANP numbers, e.g. provision of local or cellular service in the Public Switched Telephone Network.

4.1.2 The applicant must submit an NXX request form certifying that a need exists for an NXX assignment to a point of interconnection or a switching entity due to routing, billing or tariff requirements.

4.1.3 The applicant must be licensed or certified to operate in the area, if required, and must demonstrate that all applicable regulatory authority required to provide the service for which the central office code is required has been obtained.

4.4 Codes shall be assigned on a first-come, first-served basis. Good faith efforts shall be made to eliminate or to minimize the number of reserved codes. Special requirements exist in a jeopardy NPA situation. See Section 7.4(d). Consideration shall be given by the Code Administrator(s) to code reservation if the applicant can demonstrate the reservation of a code is essential to accommodate technical or planning constraints or pending regulatory approval of a tariff to provide service when the applicant has provided a proposed code use date within twelve months.

Upon written request to the Code Administrator(s), one reservation extension of six months will be granted when the proposed code use date will be missed due to circumstances beyond the control of the applicant (e.g., hardware, software provision delays, regulatory delays, etc.)

No reservation will be made unless the applicant will meet the requirements of code assignment as outlined in Section 4 for initial codes or for additional codes, dependent upon whether the reserved code is to be an initial or additional code.

If a reserved code is not activated within eighteen months, the code will be released from reservation.

7.0 Central Office Code Conservation

7.4 The following are special conservation procedures that will be invoked in the situation of a jeopardy NPA.

(a) During the special conservation period, the Code Administrator will treat all code requests in a fair and impartial manner consistent with the special conservation provisions

(d) For codes reserved per Section 4.4:

1) Holders of reserved codes will be asked to voluntarily return their codes or confirm their planned reservation dates.

2) Reservations with planned activation dates beyond the "NPA relief date" will be reviewed, with resources made available as a result of NPA relief.

3) Reservations with planned activation dates prior to the "NPA relief date" will not be honored if doing so would preclude the assignment of a code resource for which a certified request has been processed.

4) In this situation, reservations with the latest planned activation date will be the first codes to be released for assignment, and the reservation will be canceled.

7.5 Unique circumstances within a given jeopardy NPA may require extraordinary NPA-specific conservation procedures. In this event, the following activities shall apply.

(a) The Code Administrator shall develop NPA-specific conservation procedures in conjunction with the affected parties in the jeopardy NPA (See Appendix G). The Code Administrator will work with the affected parties to continually refine the NPA-specific conservation procedures as necessary, until NPA relief. The Code Administrator will notify the applicable regulatory authority(ies) of the NPA-specific procedures and, if appropriate, obtain approval for the procedures.

(b) If good faith efforts to reach agreements have failed, the Code Administrator shall draft and submit a proposed recommendation to the regulatory authority(ies) for approval. This does not preclude any other interested party from submitting an alternate recommendation.

(d) The Code Administrator will notify the affected parties and applicable regulatory authorities of the implementation of the NPA-specific conservation procedure(s) as they occur.

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April 22, 1997

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Mr. Michael A. Beach
Vice President, West Region
MCI Telecommunications Corporation
707 17th Street, Suite 4200
Denver, CO 80202

Dear Michael:

I have received your letter dated April 14, 1997. I wish to address several points discussed in that letter.

First, you are correct that, at MCI's request, our negotiation discussions have centered around interconnection agreements for Texas and Missouri. We appreciate your advising us that you intend to provide local services in Arkansas, Kansas, and Oklahoma. In your April 14 letter, you referenced "Southwestern Bell's continuing refusal to process any resale or unbundled element test orders without an executed agreement," perhaps implying our adherence to SWBT's nondiscriminatory business practices and the requirements of the Act are improper. We have treated, and will continue to treat, MCI as we treat other LSPs on a nondiscriminatory basis.

You note your letter of March 26, 1996, in which you requested region-wide negotiations. As to Arkansas, Kansas, and Oklahoma, these negotiations concluded by operation of law after 160 days. We will consider your April 14, 1997 letter as MCI's new formal request for negotiations in Arkansas, Oklahoma, and Kansas for purposes of the 135-160 day window. With regard to the form of the contract, we continue to express our preference for use of SWBT's generic contract, which we think is far more comprehensive than the MCI form contract and would avoid difficulties experienced in previous Texas and Missouri negotiations. Presumably, contracts for each state will necessarily differ because of differences in state requirements and pricing.

Both parties should reserve all rights granted to them under the Act and SWBT joins in MCI's desire to obtain just and fair interconnection agreements to both parties in Arkansas, Oklahoma, and Kansas. We disagree with your suggestion that any of SWBT's current